

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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APR - 3 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	MM Docket No. 93-94
)	
SCRIPPS HOWARD BROADCASTING)	File No. BRCT-910603KX
COMPANY)	
)	
For Renewal of License)	
Station WMAR-TV)	
Baltimore, Maryland)	DOCKET FILE COPY ORIGINAL
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
)	
For Construction Permit for a)	
New Television Facility on)	
Channel 2 at Baltimore,)	
Maryland)	
)	
To: Administrative Law Judge		
Richard L. Sippel		

MASS MEDIA BUREAU'S COMMENTS ON
JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT

1. On March 24, 1995, Scripps Howard Broadcasting Company ("Scripps Howard") and Four Jacks Broadcasting, Inc. ("Four Jacks") filed a Joint Request for Approval of Settlement agreement. The Mass Media Bureau hereby files its comments in support of the joint request.

2. The agreement provides for the dismissal of the Four Jacks' application with prejudice and grant of the WMAR-TV renewal application. The agreement is contingent upon favorable resolution by the Presiding Judge of the basic qualifying issues currently pending against Four Jacks and Scripps Howard and the filing by Scripps Howard of requests for dismissal of various

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pleadings it has filed in various Four Jacks' application proceedings. Finally, at Section 8 of the agreement, Four Jacks and Scripps Howard agree that for a ten year period they will not file any document with the Commission opposing the grant of any application filed by the other.

3. As noted by the requesters, Section 73.3523(b)(1) of the Commission's Rules provides that where the competing applicant seeks to dismiss its application prior to the issuance of an Initial Decision, "neither the applicant nor its principals [may receive] any monetary or other consideration in exchange for dismissing or withdrawing its application." Section 73.3523(d)(4) defines "other consideration" to include "nonfinancial concessions that confer any type of benefit on the recipient." In prohibiting the payment of consideration prior to the Initial Decision stage, the Commission stated it was doing so to require challengers to assess the risks and benefits of the filing of their applications before filing. Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process, 4 FCC Rcd 4780, 4784 (1989), clarified on recon., 5 FCC Rcd 3902 (1990). At footnote 75 to the Formulation of Policies and Rules, the Commission cited programming, ascertainment or employment concessions as examples of non-financial consideration. Each of these concessions confer a benefit on the challenger which would not have been obtained but

for the filing of its competing application. Here, there is no such affirmative benefit accruing to Four Jacks. Scripps Howard's agreement to request dismissal of its petitions does not leave Four Jacks in any better position than Four Jacks was before it filed its competing application. Thus, Scripps Howard's request to dismiss its petitions is not the kind of non-financial benefit the Commission contemplated in prohibiting consideration to a dismissing challenger before the issuance of an Initial Decision. In sum, the Bureau submits that the provision that Scripps Howard request dismissal of its pleadings does not constitute prohibited consideration.

4. Section 8 of the agreement, which prohibits either party from filing "any document with the Commission...that opposes the grant of any application" filed by the other for a period of ten years, is contrary to the public interest in that it would prevent either party from bringing information to the Commission's attention about the other party even if that party had a bona fide belief that the other party's station was not being operated in the public interest. The Commission has required that a similar clause be reformed before approving a settlement agreement. Nirvana Radio Broadcasting Corporation, 4 FCC Rcd 2778, 2779 (1989).

5. The joint petition and supporting materials submitted by the petitioners are otherwise in conformity with the requirements

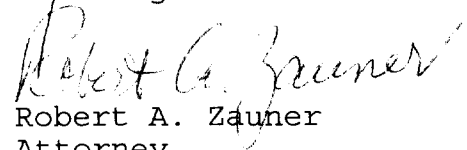
of Section 73.3525 of the Commission's Rules, which implement Section 311(c)(3) of the Communications Act of 1934, as amended. Specifically, petitioners have established that approval of the agreement is in the public interest and that neither of their applications was filed for an improper purpose.

6. In sum, the Bureau supports approval of the settlement agreement and dismissal of the Four Jacks application on the condition that the parties reformulate Section 8 of their agreement.¹

Respectfully submitted,
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April 3, 1995

¹ It is noted that Section 15 of the agreement permits the agreement to be approved with the severance of any offending provision.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 3rd day of April 1995, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement"** to:

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